IN THE HIGH COURT
OF NIUE
(LAND DIVISION)

App No. 5071, 5072 & 10668, 10669

IN THE MATTER	of **PART FUMEI/LALOVI**, Hakupu District
BETWEEN	Richie Mautama **Applicant**
AND	S Tauelima, S Bourke & A Sionetali **Respondents**

Judgment: 12 February 2016

DECISION OF JUSTICE W W ISAAC

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[1] This case concerns an application for rehearing in respect to the determination of the common ancestor for Part Fumei/Lalovi, Hakupu District and the appointment of the leveki magafaoa for that land.

[2] On 31 December 1992 a decision was issued by the Land Commissioners determining that Nofoagatagaloa was the common ancestor and the leveki magafaoa were Ikinepule Etuata and Tamahaliki Sionetali. (Minute Book No. 6 Folio 202 -203).

[3] On 11 December 1992 Stan Luisi Tauelima filed an application to rehear that decision which was heard on 9 March 1994 and adjourned until the land was further investigated.

[4] In terms of the Court record nothing happened until 29 October 2012 when Richie Mautama filed the present applications as follows:

(i) An application to determine the title and common ancestor of the above land as Tauelima; and

(ii) An application to appoint Richie Mautama as the leveki magafaoa for the land.

[5] This application by Mr Mautama was heard by me on 27 May 2014 and it became clear that Mr Mautama wanted his application of 29 October 2012 to revive the Stan Luisi Tauelima application for a rehearing.

[6] Therefore the issues to be determined are:

(i) Whether the court should grant the original application for the rehearing by Stan Luisi Tauelima as is now being requested by Mr Mautama; and

(ii) If the rehearing is granted whether the applications of Mr Mautama now filed should be granted.

Discussion

[7] Rule 30 of the Niue Land Court Rules 1969 state:

> *"That no application for rehearing under s.45 Niue Amendment Act (No.2) 1969 shall be after the expiry of fourteen (14) days after the mailing of the Order sought to be reheard."*

[8] Section 45 Niue Amendment Act (No.2) 1968 provides:

(1) On the application of any person interested, the Land Court may grant a rehearing of any matter either wholly or as to any part of it.

(2) On any such rehearing the Court may either affirm, vary, or annual its former determination, and may exercise any jurisdiction which it might have exercised on the original hearing.

(3) When a rehearing has been so granted, the period allowed for an appeal shall not commence to run until the rehearing has been disposed of by a final order of the Court.

(4) Any such rehearing may be granted on such terms as to costs and otherwise as the Court thinks fit, and the granting or refusal of it shall be in the absolute discretion of the Court.

(5) No order shall be so varied or annulled at any time after the signing and sealing of it.

[9] The principles relating to rehearing cases are set out in the case of *Grove Broadcastings Co. Ltd v Telesystems Communications Ltd (2000) GENDND 1496 (10 November 2000), Ladd v Marshall (1954) Ad ER745, Dragicevich v Martinovich (1969) NZLR 306 and Realty Care Corporation v Cooper (1989 2PRNZ 426).* These principles include:

(i) That there has been serious misconduct on the part of a Judge, juror, witness or lawyer;

(ii) Perjured evidence has been offered to the Court;

(iii) There has been discovery of credible and material evidence which could not have been reasonably foreseen or known at the trial;

(iv) There has been a breach of natural justice; or

(v) There has been fraud or corruption; and

(vi) The Court is satisfied that there has been a miscarriage of justice.

[10] The Court's jurisdiction as set out in s.45 Niue amendment Act (No.2) 1968 makes it clear that the Court has an absolute discretion as to whether or not to grant a rehearing.

[11] In exercising this discretion the Court must apply the principles above and in essence determine whether in a particular case a miscarriage of justice has occurred.

[12] In this case Mr Mautama has attempted to piggy back on the application for rehearing of Stan Luisi Tauelima.

[13] Stan Tauelima's application was filed within the 14 day time period as permitted by Rule 30 Niue Land Court Rules 1969 and although the case was adjourned on 9 March

1994 for further investigation nothing was done by Mr Tauelima between the filing of Mr Tauelima's application in 1994 and Mr Mautama's application of 29 October 2012.

[14] That is in effect 22 years after the original Order and 22 years after the title was granted determining Nofoagatagaloa as the common ancestor and Ikinepule Etuata and Tamahaliki Sionetali as leveki magafaoa.

[15] As stated in that time Stan Luisi Tauelima took no steps to advance his case and no further investigation was carried out. Therefore, one must ask whether it is in the interest of justice that Mr Mautama be permitted to use Mr Tauelima's application to further his application.

[16] After considering the evidence of Mr Mautama presented to the Court on 27 May 2014 and also his written submissions I have serious concerns with Mr Mautama's application.

[17] These concerns are as follows:

(i) Mr Mautama has attempted to revive a rehearing application 22 years after the original order was made. This is simply too late. The legislation relating to rehearings puts time frames in place so that if a challenge is made to a title it can be completed close to the time the order was made. To do otherwise would in my view undermine the stability of the title system in Niue.

(ii) The evidence relied on by Mr Mautama is not new. It was available 22 years ago when the title application was originally heard. If the Tauelima parties wished to pursue their case at that time, this evidence was available to them. They choose not to do so and in my view cannot now bring this evidence to the Court.

(iii) There is no miscarriage of justice to the applicant. The process followed was in accord to the principles of natural justice and the Tauelima side were not prejudiced in any way.

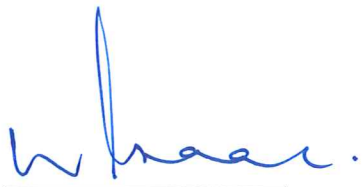
(iv) If I grant the rehearing application, I consider the miscarriage of justice would be against the respondent who after 22 years is entitled to rely on the title order by the court on 31 December 1992.

[18] For the reasons set out above, the application for the rehearing of Stan Luisi Tauelima as attempted to be revived by Mr Mautama must fail and there is no need for me to consider Mr Mautama's application further.

[19] Accordingly the application of Mr Mautama is dismissed.

[20] A copy of this decision is to go to all parties.

Dated at Wellington this 12th day of February 2016.



W W Isaac
JUDGE